

1 RONALD WILCOX, Bar #176601  
2 Attorney at Law  
3 1900 The Alameda, Suite 530  
4 San Jose, CA 95126  
5 Tel: (408) 296-0400  
6 Fax: (408) 296-0486  
7 [ronaldwilcox@gmail.com](mailto:ronaldwilcox@gmail.com)

8 BEN DUPRE, Bar # 231191  
9 Dupre Law Firm, P.C.  
10 2005 De La Cruz Blvd., Suite 203  
11 Santa Clara, CA 95050  
12 Tel: (408) 727-5377  
13 Fax: (408) 727-5310  
14 [bendupre@gmail.com](mailto:bendupre@gmail.com)

15 Counsel for Plaintiff,  
16 ALVIN LEUNG

17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**  
19 **SAN JOSE**

20 

---

**ALVIN LEUNG** )  
21 Plaintiff, ) Civil Action No.  
22 v. )  
23 **CITIBANK, N.A. and DOES 1-10,** )  
24 Defendants. )  
25 

---

26 **I. INTRODUCTION**

- 27 1. Defendant made repeated telephone calls to Plaintiff's cellular telephone, in connection  
28 with an attempt to collect an alleged debt, despite his repeated requests that Citibank and  
29 its representatives cease, and without his consent, including calling him more than one-  
30 hundred times (100) in about a thirty (30) day (from July 11, 2013 to August 2013).  
31 Defendants placed numerous telephone calls on the same day. Defendants would abruptly

1 hang up on Plaintiff at times. Defendants used automated telephone dialing systems, and  
 2 pre-recorded messages to telephone Plaintiff's cellular phone in violation of the  
 3 Telephone Consumer Protection Act, and the Rosenthal Fair Debt Collection Practices  
 4 Act.

- 5 2. Plaintiff suffered physical and emotional injury, including severe and substantial  
 6 emotional distress, and actual damages including but not limited to, anxiety, emotional  
 7 distress, stress, frustration, depression, loss of concentration, amongst other injuries. The  
 8 sound of a cell phone ringing deepened Plaintiff's anxiety and caused him to feel  
 9 "panicky."
- 10 3. It is the pattern and practice, and the business plan of Defendants to place repeated and  
 11 continuous telephone calls to consumers in an abusive and intrusive manner, and fail to  
 12 cease and desist communicating, and to contact consumers at inconvenient times, which  
 13 conduct has the natural consequence to annoy, oppress, harass and abuse. Certain nations  
 14 (like Indonesia) have banned Citibank from collecting debts entirely.<sup>1</sup> Also See, *Cayanan*  
 15 v. *Citi Holdings*, 12-cv-1476 MMAJMA (S.D. Cal. June 15, 2012)(TCPA class action  
 16 alleging 110 calls to Plaintiff's cell phone); *Baker v. Citibank, N.A.* 12-cv-05038 (C.D.  
 17 Cal. 2012)(class action for unlawful TCPA calls to consumers throughout California)  
 18 *Haas v. Citibank*, #13-01578 (N.D. Cal 2013)(150 calls to Plaintiff's cell phone after  
 19 Plaintiff requested they cease, calling estranged family members, and hiring a third party  
 20 debt collector to continue calling, despite Plaintiff's requests to cease); *Trejo v. Citibank*,  
 21 13-03623 (N.D. Cal. 2013)(more than thirty-four (34) calls to cell phone in two (2)  
 22 months, despite request to cease).

---

23  
 24  
 25<sup>1</sup> <http://www.sanjosebankruptcyfdcpalawyer.com/?page=2>

- 1       4. On December 29, 2008, the Federal Communications Commission (“FCC”) issued a  
2 citation to Citibank for abusive collection practices, including admonishing Citibank that  
3 “[i]f, after receipt of this citation, you or your company violate the Communications Act  
4 or the Commission’s rules in any manner described herein, the Commission may impose  
5 monetary forfeitures not to exceed \$11,000 for each such violation or each day of a  
6 continuing violation occurring before September 2, 2008, and \$16,000 for each such  
7 violation or each day of a continuing violation occurring on or after September 2, 2008.”  
8  
9       5. This is an action for damages brought by a consumer to redress the Defendants’ violations  
10 of California’s Rosenthal Fair Debt Collection Practices Act, Civil Code Section 1788 et seq.  
11 (hereinafter, “state act”), and related common law claims, which prohibit debt collectors  
12 from engaging in abusive, deceptive and unfair practices in their collection of consumer  
13 debts. In 2000 the California legislature incorporated most of the Federal Fair Debt  
14 Collection Practices Act (15 U.S.C. 1692 et seq.) into the California FDCPA. See Civil Code  
§1788.17.  
15  
16       6. According to 15 U.S.C. Section 1692:

17              There is abundant evidence of the use of abusive, deceptive, and unfair debt  
18 collection practices by many debt collectors. Abusive debt collection practices  
contribute to the number of personal bankruptcies, to marital instability, to the loss of  
jobs, and to **invasions of individual privacy**.

19  
**II. JURISDICTION AND VENUE**

- 20       7. Jurisdiction of this Court arises under 15 U.S.C. sec. 1692k(d), 28 U.S.C. sec. 1337, and  
21 supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. sec. 1337.  
22 Venue in this District is proper in that Defendants transacts business here and the conduct  
23 complained of occurred here.

24  
**III. PARTIES**

- 25       8. Plaintiff Alvin Leung, (hereinafter “MR. LEUNG” or “Plaintiff”) is a natural person  
residing in San Jose, in the County of Santa Clara, in the State of California.

9. On information and belief, Defendant, CITIBANK is a foreign business corporation doing business in California (hereinafter “CITIBANK”). CITIBANK, in the ordinary course of business, regularly attempts to collect debts on its own behalf.

10. Defendant, CITIBANK is a “debt collector” as defined by California Civil Code §1788.2.

11. Defendants, Does 1 through 10 are persons or entities whose true names and capacities are presently unknown to Plaintiff, and who therefore are sued by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants perpetrated some or all of the wrongful acts alleged herein, is responsible in some manner for the matters alleged herein, and is jointly and severally liable to Plaintiff. Plaintiff will seek leave of court to amend this complaint to state the true names and capacities of such fictitiously named Defendants when ascertained.

12. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to the Plaintiff for their conduct. Defendants approved, authorized and/or ratified the wrongful acts and omissions herein.

13. Any reference hereinafter to "Defendant" or "Defendants" or "Citibank", without further qualification, is meant by Plaintiff to refer to each Defendant named above.

## **IV. FACTUAL ALLEGATIONS**

14. Plaintiff alleges on information and belief as follows:

15. CITIBANK, N.A. telephoned Plaintiff in connection with an attempt to collect a consumer debt. Plaintiff incurred credit card debts to Defendant. The debt were primarily incurred for personal, family or household purposes.

16. The money Defendant is attempting to collect is a “consumer debt” as that term is defined by California Civil Code § 1788.2(f).

- 1       17. Before July 11, 2013 Defendant began to make repeated and continuous telephone calls  
2           to Plaintiff's cellular phone in connection with an attempt to collect the alleged debt.  
3       18. On or about July 11, 2013, MR. LEUNG indicated he would make minimum payments by  
4           July 15, 2013, and asked CITIBANK to stop the repeated calls.  
5       19. However, Defendant chose to ignore Plaintiff's request that the phone calls cease, and  
6           continued its repeated calls., including calling back the same day.  
7       20. Defendant made repeated telephone calls to Plaintiff's cellular telephone, in connection  
8           with an attempt to collect an alleged debt, despite requests that Citibank and its  
9           representatives cease, and without his consent, including calling him more than one-  
10           hundred (100) times in about a thirty (30) day (from July 11, 2013 to August 2013).  
11           Defendants placed numerous telephone calls on the same day calls to Plaintiff on some  
12           days). Defendants would abruptly hang up on Plaintiff at times. Defendants used  
13           automated telephone dialing systems, and pre-recorded messages to telephone Plaintiff's  
14           cellular phone in violation of the Telephone Consumer Protection Act, and the Rosenthal  
15           Fair Debt Collection Practices Act.  
16  
17       21. Defendants' calls were repeated and continuous, and were with such frequency as to be  
18           unreasonable and constitute harassment under the circumstances.  
19  
20       22. Upon information and belief CITIBANK made recordings of its calls to MR. LEUNG.  
21  
22       23. CITIBANK engaged in conduct, the natural consequence was to harass and oppress.  
23  
24       24. CITIBANK used false, deceptive or misleading representations or means in connection  
25           with the collection of a debt, at times, hanging up, failing to disclose who was calling and  
         the purpose of the call, and taking action they could not legally take.

1  
2 25. CITIBANK engaged in unfair and unconscionable practices in an attempt to collect a  
3 debt, including using an automated dialing system, to place telephone calls to MR.  
4 LEUNG'S cellular phone, without MR. LEUNG'S consent.

5  
**V. FIRST CAUSE OF ACTION – ROSENTHAL FDCPA**

6 26. Plaintiff repeats, re-alleges, and incorporates by reference all of the paragraphs above as  
7 though fully stated herein.

8 27. The foregoing acts and omissions by these Defendants with respect to Plaintiff in their  
9 attempts to collect a consumer debt from Plaintiff constitute numerous and multiple  
10 unfair, deceptive, misleading practices made unlawful pursuant to the California  
11 Rosenthal Fair Debt Collection Practices Act, including but not limited to Civil Code §§  
12 1788-1788.32, including §§ 1788.11, 1788.11(d), 1788.11(e) and 1788.17.

13 28. Plaintiff is entitled to recover statutory damages, actual damages, reasonable attorney's  
14 fees and costs.

15  
**VI. SECOND CAUSE OF ACTION – INTRUSTION UPON SECLUSION**

16 29. Plaintiff repeats, re-alleges, and incorporates by reference all of the paragraphs above as  
17 though fully stated herein.

18 30. The foregoing acts of Defendants as described herein constitute an invasion of the  
19 Plaintiff's privacy and an intrusion upon his right of seclusion.

20 31. Plaintiff has a common law right to, and a reasonable expectation of privacy, his home  
21 and place of employment, and in regard to his private affairs.

22 32. Defendants' abusive and improper collection practices in the collection of this debt  
23 constituted a substantial invasion upon Plaintiff's seclusion and privacy, and would be  
24 highly offensive to a reasonable person.

- 1 33. Defendants intended to cause emotional distress, and/or engaged in reckless disregard of  
2 the probability of causing Plaintiffs emotional distress.
- 3 34. As a proximate result of Defendants' conduct, Plaintiff has suffered damages in an  
4 amount to be determined by proof and a finder of fact at trial.
- 5 35. Defendants acted with oppression, fraud, and/or malice, thereby entitling Plaintiff to  
6 punitive damages in an amount according to proof and a finder of fact at trial.

7 **VII. THIRD CAUSE OF ACTION - TCPA**

- 8 36. Plaintiff repeats, re-alleges and incorporates by reference all other paragraphs.  
9 37. At all times relevant to this complaint, the Plaintiff was and is a "person" as defined by  
10 the TCPA 47 U.S.C. § 153(32).  
11 38. At all times relevant to this complaint, the Defendant has owned, operated, and or  
12 controlled "customer premises equipment" as defined by the TCPA 47 U.S.C. § 153(14)  
13 that originated, routed, and/or terminated telecommunications.  
14 39. The Defendant at all times relevant to the complaint herein engages in  
15 "telecommunications" defined by the TCPA U.S.C § 153(43).  
16 40. The Defendant at all times relevant to the complaint herein engages in "interstate"  
17 communications" by the TCPA U.S.C. § 153(22).  
18 41. At all times relevant to this complaint, the Cross-Defendant has used, controlled, and/or  
19 operated "wire communications" as defined by the TCPA 47 U.S.C. § 153(52), that  
20 existed as instrumentalities of interstate and intrastate commerce.  
21 42. At all times relevant to this complaint, the Cross-Defendant has used, controlled, and/or  
22 operated "automatic telephone dialing systems" as defined by the TCPA 47 U.S.C. §  
23 227(a)(1) and 47 C.F.R. § 64.1200 (f) (1).  
24 43. Defendant violated the TCPA, 47 U.S.C. § 227(b)(1)(A), by using an automatic  
25

1       telephone dialing system to telephone Plaintiff's cellular phone in an attempt to collect an  
2       alleged debt.

3       44. Defendant frequently made calls to Plaintiff's cell phone using an automatic telephone  
4       dialing system (including an automated dialing machine, dialer, and auto-dialer) and/or  
5       an artificial or prerecorded voice.

6       45. Defendants violated the Telephone Consumer Protection Act ("TCPA") 47 U.S.C. §  
7              227(b)(1)(A), by using an automatic telephone dialing system to telephone a cellular  
8       phone, without Plaintiff's consent.

9       46. Defendants' violations were willful and knowing.

10      47. As a result of these violations of the TCPA, Defendants are liable to Plaintiff for statutory  
11       damages, including treble damages.

12      48. Defendants engaged in willful and knowing violations of the Telephone Consumer  
13       Protection Act ("TCPA") 47 U.S.C. § 227(b)(1)(A).

14      49. Defendants' acts were willful, intentional and knowing.

15      50. Defendants acted with oppression, fraud, and/or malice, thereby entitling Plaintiff to  
16       punitive damages in an amount according to proof and a finder of fact at trial.

17      51. Plaintiff is entitled to recover actual and punitive damages.

18              **VIII. FOURTH CAUSE OF ACTION – NEGLIGENCE**

19      52. Plaintiff repeats, re-alleges, and incorporates by reference all of the paragraphs above as  
20       though fully stated herein.

21      53. Defendants' outrageous, abusive and intrusive acts as described herein constituted  
22       negligent infliction of emotional distress.

23      54. Plaintiff suffered (1) serious emotional distress, (2) actually and proximately caused by  
24       (3) wrongful conduct (4) by a defendant who should have foreseen that the conduct  
25       would cause such distress.

- 1       55. Defendants' conduct as described herein was wrongful conduct in that the Defendants  
2                  conducted their business in an abusive, oppressive, and harassing manner.
- 3       56. Defendants' actions and omissions as described herein constitute negligence in that  
4                  Defendants owed Plaintiff a duty of reasonable care in the collection of the alleged debt,  
5                  and use of the telephone in an attempt to collect such debts, said duties were breached,  
6                  and said breach was the proximate cause of damages suffered by Plaintiff.
- 7       57. Defendants owed a duty to refrain from outrageous and unlawful calls in connection with  
8                  their attempts to collect a debt.
- 9       58. Defendants' actions and omissions demonstrate a conscious disregard of the rights or  
10                 safety of others, and constitute despicable conduct that subjected Plaintiff to cruel and  
11                 unjust hardship in conscious disregards of his rights.
- 12       59. Plaintiff suffered damages due to Defendants' actions in an amount to be determined at  
13                 trial.
- 14       60. Plaintiff is entitled to punitive damages for the actions and omissions of the Defendants  
15                 as described herein.

16                  **IX. FIFTH CAUSE OF ACTION – NEGLIGENT TRAINING AND SUPERVISION**

- 17       61. Plaintiff incorporates by reference the above paragraphs as though fully stated herein  
18                 below.
- 19       62. Defendant negligently trained and supervised their employees and agents as to the  
20                 performance of their job duties and as a result of such negligent instruction and  
21                 supervision, the employees/agents while carrying out their job duties caused injury and  
22                 damage to Plaintiff.
- 23       63. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff has suffered  
24                 damages in an amount to be determined at trial.

64. Defendant acted with oppression, and/or malice, thereby entitling Plaintiff to punitive damages in an amount to be determined at trial. Defendant acted in a despicable manner and acted with a conscious disregard to the rights of Plaintiff.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the

Defendants for the following:

- A. Actual, statutory and punitive damages;
  - B. Statutory and actual damages pursuant to California Civil Code § 1788 et seq.
  - C. Costs and reasonable attorney's fees pursuant to Civil Code 1788 et seq.
  - D. Award statutory damages in the amount of \$500.00 for each violation of the TCPA against all of the Defendants, and/or treble damages for each willful or knowing violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).
  - E. For such other and further relief as may just and proper.

Respectfully submitted,

/s/Ronald Wilcox

Ronald Wilcox, Attorney for Plaintiff

7/10/14

Date

## **DEMAND FOR JURY TRIAL**

Please take notice that Plaintiff demand trial by jury in this action.

/s/Ronald Wilcox

---

Ronald Wilcox

7/10/14

---

Date